

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Matejcek	Team: Squad #1	CCRB Case #: 201608716	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/12/2016 2:00 AM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 4/12/2018	EO SOL 4/12/2018	
Date/Time CV Reported Wed, 10/12/2016 3:20 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/17/2016 11:30 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Nocera	18084	906939	114 PCT
2. POF Melissa Diaz	21222	958504	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Melissa Diaz	Abuse: Police Officer Melissa Diaz threatened to handcuff § 87(2)(b)	§ 87(2)(b)
B.POM Patrick Nocera	Discourtesy: Police Officer Patrick Nocera spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On October 12, 2016, § 87(2)(b) filed this complaint with IAB via telephone (01 Board Review). It was received by the CCRB on October 17, 2016.

On October 12, 2016 at approximately 2:00 a.m., § 87(2)(b) was reportedly chopping vegetables in her kitchen with her friend, § 87(2)(b). The handle of § 87(2)(b)'s knife broke unexpectedly, causing its blade to flip backwards and cut § 87(2)(b)'s hand. § 87(2)(b) immediately called 911 to report her injuries with the help of § 87(2)(b) and her § 87(2)(b)-old daughter, § 87(2)(b). Shortly thereafter, two FDNY EMTs, § 87(2)(b) and § 87(2)(b) arrived outside § 87(2)(b)'s apartment. Two officers, PO Melissa Diaz and PO Patrick Nocera of the 114th Precinct, also responded to the scene.

§ 87(2)(b) and § 87(2)(b) met the EMTs and the officers outside. PO Diaz allegedly became frustrated with § 87(2)(b)'s indecisiveness regarding whether she would go to the hospital and threatened to handcuff her, stating “If you don’t listen to the EMTs, I’m gonna cuff you up” (**Allegation A**). While § 87(2)(b) spoke with PO Diaz and the EMTs, § 87(2)(b) spoke with PO Nocera outside the ambulance. After § 87(2)(b) tried to explain the situation to PO Nocera, PO Nocera allegedly told him to “Shut the fuck up” (**Allegation B**). Ultimately, § 87(2)(b) refused medical attention at the scene and the officers left. However, as the EMTs were driving away, § 87(2)(b) flagged down their ambulance and asked them to take her to the hospital. § 87(2)(b) was ultimately treated at § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) were arrested or issued a summons as a result of this incident.

No video footage was available for this incident.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) both rejected mediation for this case, § 87(2)(b)
- As of January 6, 2017, no Notice of Claim has been filed in regard to this incident (02 Board Review).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint.
- PO Diaz has been a member of the NYPD for one year. This is the first CCRB allegation that has been made against her (04 Board Review).
- PO Nocera has been a member of the NYPD for 22 years. This is the first CCRB allegation that has been made against him (04 Board Review).

Potential Issues

- After providing an initial phone statement, § 87(2)(b) refused to cooperate with the investigation. The undersigned exhausted the required number of contact attempts but § 87(2)(b) did not respond to schedule an in-person interview.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Melissa Diaz threatened to handcuff

§ 87(2)(b)

§ 87(2)(b) was consistent in her descriptions of her activities prior to the incident. Across multiple statements, she repeated that she cut herself by accident. Although she admitted to being panicked when she called 911, she stated that she never said anything to the operator that could have been interpreted as suicidal. § 87(2)(b) also noted that § 87(2)(b) and § 87(2)(b) spoke with 911 operators on this call. Although § 87(2)(b) did not recall what they told the operator, she stated that she never heard them say anything that could have led the operator to believe that she was a danger to herself or to others.

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) explained that, after she and § 87(2)(b) exited her apartment, she voluntarily entered the ambulance to speak with the EMTs inside while PO Diaz, PO Nocera, and § 87(2)(b) stood outside the ambulance's open back door. According to § 87(2)(b) PO Diaz did not become involved in this conversation until § 87(2)(b) began to argue with the EMTs over which hospital she should be taken to. § 87(2)(b) explained that the EMTs wanted to take her to § 87(2)(b) in Manhattan because its trauma care resources made it the best hospital to treat her deep cut. § 87(2)(b) was suspicious that the EMTs were suggesting this hospital because they wanted to send her to a psychiatric ward due to her history of mental health issues. In response, § 87(2)(b) told the EMTs and the officers that she would refuse medical attention unless she was taken to § 87(2)(b) in Queens, which is located closer to her apartment and does not have a psychiatric ward. After overhearing this conversation, PO Diaz allegedly became frustrated with § 87(2)(b) and threatened to handcuff her.

§ 87(2)(g)

§ 87(2)(b) In her call to IAB and her initial CCRB phone statement, she only made mention of this threat once, but in her CCRB interview, she stated that PO Diaz made this threat three separate times. Regardless, § 87(2)(b) description of PO Diaz's language was consistent, alleging that PO Diaz threatened to handcuff her for refusing to listen to the EMTs and go to the hospital that they recommended. During her in-person statement, § 87(2)(b) also stated that the EMTs never told PO Diaz that it was imperative that she go to the hospital (05 Board Review).

In a phone statement provided to the CCRB, § 87(2)(b) stated that § 87(2)(b) was “nervous” throughout the incident, particularly because she did not want to be taken to a psychiatric ward. § 87(2)(b) stated that § 87(2)(b) was never disruptive, rude, or noncompliant. Like § 87(2)(b) § 87(2)(b) stated that PO Diaz told § 87(2)(b) that she would be handcuffed if she did not listen to the EMTs.

In an in-person interview at the CCRB, EMT § 87(2)(b) stated that all he knew prior to responding was that a female had stabbed herself in the hand inside her apartment. He did not know whether or not the stab wound was intentional. EMT § 87(2)(b) stated that when § 87(2)(b) first exited her apartment, she was in an “extremely agitated” and panicked state and was screaming about her injuries. He also noted that § 87(2)(b) appeared to be intoxicated based on the fact that she was screaming and that she would not let him look at the beverage she was drinking when she exited the apartment. EMT § 87(2)(b) stated that, although § 87(2)(b) was panicked, she was never argumentative or combative and never made him feel unsafe. Shortly after § 87(2)(b) exited her apartment, the EMTs asked her to join them in the back of the ambulance so that they could assess her injuries. While § 87(2)(b) and the EMTs sat in the back of the ambulance with the doors open, PO Diaz, PO Nocera, and § 87(2)(b) stood immediately outside. EMT § 87(2)(b) stated that, before the EMTs had assessed the situation, PO Diaz asked him if he would like her to handcuff § 87(2)(b). EMT § 87(2)(b) told PO Diaz that he wanted to hear about what happened from § 87(2)(b) and get a better look at her injuries before making that decision. Since PO Diaz asked this question directly in front of § 87(2)(b), EMT § 87(2)(b) stated that § 87(2)(b) probably heard the exchange. EMT § 87(2)(b) then examined § 87(2)(b)'s injuries and asked her to explain what happened. After § 87(2)(b) provided a relatively calm and coherent narrative of what had occurred and allowed him to examine her cut, EMT § 87(2)(b) determined that she did not pose any danger to herself or to others and that there was no need for her to be restrained. However, based on the depth of her cut, he determined that it was imperative that she visit a hospital. When the EMTs told § 87(2)(b) where they wanted to take her, she became agitated and argumentative again because, as discussed above, she was concerned that they wanted to take her to a psychiatric ward. EMT § 87(2)(b) added that, although PO Diaz and PO Nocera both attempted to calm § 87(2)(b) down and convince her to go to § 87(2)(b) as the EMTs had suggested, neither officer ever became impatient or angry with § 87(2)(b) or made any threat to handcuff her (06 Board Review).

§ 87(2)(g). Like EMT § 87(2)(b), EMT § 87(2)(b) highlighted the fact that the EMTs knew very little about the nature of § 87(2)(b)'s injuries when they first responded to the scene. Prior to obtaining her narrative of events, the EMTs had no way of knowing for sure whether she was a threat to herself or to others. Furthermore, EMT § 87(2)(b) noted that § 87(2)(b) was in a panicked state when the EMTs arrived. EMT § 87(2)(b) stated that § 87(2)(b) was so nervous that, when EMT § 87(2)(b) first reached for her hand

to look at her injuries, she guarded her arm and waved him away. EMT § 87(2)(b) also stated that § 87(2)(b) admitted to having had “a few drinks” that night and may have been intoxicated. After unsuccessfully attempting to calm § 87(2)(b) down outside her apartment, EMT § 87(2)(b) suggested that she sit with the EMTs in the back of the ambulance so that they could speak to her about what happened in a controlled environment. § 87(2)(b) agreed to this, so she, EMT § 87(2)(b), EMT § 87(2)(b) and PO Diaz all entered the back of the ambulance together. After doing so, EMT § 87(2)(b) stated that they closed all of the ambulance’s doors, meaning that § 87(2)(b) and PO Nocera were not able to hear or see what was being discussed inside. EMT § 87(2)(b) stated that once the ambulance doors were closed, EMT § 87(2)(b) spoke with § 87(2)(b) to determine the circumstances surrounding her injuries. Once § 87(2)(b) showed him her cut, he stated aloud that it was imperative that she go to a hospital. Like EMT § 87(2)(b), EMT § 87(2)(b) noted that § 87(2)(b) argued with the EMTs about which hospital she should be taken to. According to EMT § 87(2)(b), § 87(2)(b) did not want to be taken to the hospital that the EMTs had suggested and stated that she wanted to go to § 87(2)(b) in Queens instead. However, EMT § 87(2)(b) stated that he and EMT § 87(2)(b) never requested that § 87(2)(b) be handcuffed. EMT § 87(2)(b) did not recall whether PO Diaz asked whether the EMTs wanted § 87(2)(b) to be handcuffed. When asked if an officer threatened to handcuff § 87(2)(b) if she refused to comply with the EMTs, EMT § 87(2)(b) said yes, although he did not remember which officer made this threat or when it was made. EMT § 87(2)(b) explained that it would have made the most logical sense for PO Diaz to have made this threat while she was seated with § 87(2)(b) and the EMTs inside the ambulance since § 87(2)(b) was being uncooperative and arguing about which hospital she should be taken to. EMT § 87(2)(b) stated that this was the only time that handcuffing was mentioned in his presence (07 Board Review).

PO Diaz explained that, prior to arriving, all she knew was that there was a “heavy bleeder” at the given location. When § 87(2)(b) exited her apartment, PO Diaz noticed that she smelled like alcohol and that she was having a difficult time standing up. Additionally, PO Diaz stated that § 87(2)(b) told her that he and § 87(2)(b) had been drinking that night. PO Diaz stated that the EMTs led § 87(2)(b) into the back of their ambulance and sat down with her on the bench inside. The back door to the ambulance was left open, and PO Diaz stood on the first step, while PO Nocera and § 87(2)(b) stood directly behind her. PO Diaz stated that all parties were within earshot of each other throughout the course of this incident. Once § 87(2)(b) entered the ambulance, the EMTs examined her injury and told her that they wanted to take her to § 87(2)(b). As discussed above, § 87(2)(b) did not want to go to the EMT’s choice of hospital and began to argue with them and insisting that she be taken to a hospital § 87(2)(b). PO Diaz stated that she tried to calm § 87(2)(b) down and convince her to go with the EMTs. However, PO Diaz stated that she never threatened to handcuff § 87(2)(b). PO Diaz added that, throughout the course of the interaction, § 87(2)(b) never did or said anything that led her to believe that she needed to be restrained. PO Diaz stated that she did not

have any opinion regarding whether § 87(2)(b) could refuse medical attention because it is the EMTs' job to make that determination. Although the EMTs told PO Diaz that § 87(2)(b) "needed to go to the hospital," they never explicitly stated that she was not able to refuse medical attention on scene. Therefore, when the EMTs told § 87(2)(b) that she was free to take a taxi to the hospital of her choosing on her own, PO Diaz and PO Nocera left the scene without having any additional interactions with § 87(2)(b) (08 Board Review).

Like PO Diaz, PO Nocera noted that § 87(2)(b) appeared to be intoxicated when they arrived at her apartment because she smelled of alcohol and was being argumentative. PO Nocera stated that § 87(2)(b) was led into the ambulance by the EMTs, that the back door of the ambulance was open, and that PO Diaz was standing on the ambulance's steps. Meanwhile, PO Nocera and § 87(2)(b) stood directly behind her on the street. During this conversation, PO Nocera overheard § 87(2)(b) arguing with the EMTs about which hospital she should be taken to. He stated that, other than this argument, § 87(2)(b) was fully cooperative and never behaved in a way that caused him to believe that she needed to be restrained or that she was at risk of harming herself or others. PO Nocera stated that PO Diaz never told § 87(2)(b) that she could be handcuffed. Although PO Nocera stated that he never spoke directly to the EMTs about § 87(2)(b)'s ability to refuse medical attention, he assumed that she was fully able to do so because her behaviors never led him to believe otherwise. As soon as § 87(2)(b) refused medical attention, he and PO Diaz left the scene without incident (09 Board Review).

§ 87(2)(g)

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Patrol Guide Procedure 221-13 instructs officers to safeguard mentally ill or emotionally disturbed persons who do not voluntarily seek medical assistance. It defines an emotionally disturbed person as someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others (10 Board Review). This procedure also specifies that, in order to remove an EDP to a hospital in an ambulance, a member of the service may use restraining equipment including handcuffs if the patient is violent, resists, or if they are directed to do so by a physician examiner (10 Board Review).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: Police Officer Patrick Nocera spoke discourteously to § 87(2)(b)

§ 87(2)(b) consistently stated that, while she conversed with PO Diaz and the EMTs inside the ambulance, § 87(2)(b) and PO Nocera stood and talked a few feet away from the ambulance and within earshot of everyone inside. Although § 87(2)(b) did not hear the entirety of their conversation, she was able to determine that § 87(2)(b) was trying to tell PO Nocera why § 87(2)(b) did not want to go to the hospital that the EMTs had suggested. § 87(2)(b) stated that PO Nocera and § 87(2)(b) did not sound like they were arguing and that neither of them spoke with a raised voice. However, she consistently alleged that PO Nocera told § 87(2)(b) to “Shut the fuck up” (05 Board Review).

As is mentioned above, § 87(2)(b) was not willing to cooperate with the investigation and did not speak with the undersigned apart from providing a brief phone statement. In this statement, § 87(2)(b) corroborated § 87(2)(b)'s allegation, stating that PO Nocera told him to “Shut the fuck up” when he tried to explain the situation.

§ 87(2)(g) According to EMT § 87(2)(b)'s description of everyone's location during the incident, PO Nocera and § 87(2)(b) were immediately outside of the ambulance's open doors while EMT § 87(2)(b) was inside the bus with § 87(2)(b) and EMT § 87(2)(b). Therefore, EMT § 87(2)(b) was able to hear the full exchange taking place between PO Nocera and § 87(2)(b). He characterized § 87(2)(b) as “calm and quiet” throughout the incident and stated that the only time he ever heard § 87(2)(b) speak was when he told § 87(2)(b) to calm down. EMT § 87(2)(b) never heard

either officer speak to § 87(2)(b) and never heard any heated argument taking place outside the ambulance. He never heard PO Nocera tell § 87(2)(b) to “Shut the fuck up,” never heard any officer use any form of profanity on scene, and never heard any civilian complain that an officer had cursed at them (06 Board Review).

§ 87(2)(g). Unlike EMT § 87(2)(b), EMT § 87(2)(b) stated that the ambulance’s doors were shut when the alleged misconduct took place, that PO Nocera and § 87(2)(b) were alone outside, and that no one inside the ambulance would have been able to see or hear what was taking place between the two of them outside. Consequently, EMT § 87(2)(b) did not know whether PO Nocera and § 87(2)(b) were ever engaged in an argument or whether PO Nocera ever told § 87(2)(b) to “Shut the fuck up.” He stated that he never heard any officer curse at any civilian and was never made aware of any complaints that this had occurred (07 Board Review).

In PO Diaz’s CCRB interview, she stated that the ambulance doors were open and that PO Nocera and § 87(2)(b) were standing directly outside and within earshot of everyone inside the ambulance. PO Diaz stated that she overheard a conversation taking place between PO Nocera and § 87(2)(b) but characterized it as “normal” and “pleasant.” Although PO Diaz did not hear the entirety of their conversation, she stated that she never heard PO Nocera tell § 87(2)(b) to “Shut the fuck up” or curse at him in any other way (08 Board Review).

PO Nocera stated that he and § 87(2)(b) were engaged in a conversation directly outside the open ambulance doors within earshot of the people inside. Although § 87(2)(b) was not argumentative with officers or EMTs in any way, he repeatedly called out to § 87(2)(b) from the street, telling her to calm down. PO Nocera stated that he tried to calm § 87(2)(b) down by reassuring him that § 87(2)(b) would be fine and that § 87(2)(b) thanked him for doing a good job. He denied the allegation that he told § 87(2)(b) to “Shut the fuck up” (09 Board Review).

§ 87(2)(g).
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Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date